

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

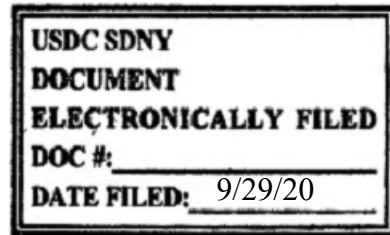
EFCG, INC.,

Plaintiff,

-against-

AEC ADVISORS, LLC, et al.,

Defendants.



19-CV-8076 (RA) (BCM)

ORDER

BARBARA MOSES, United States Magistrate Judge.

The Court conducted a discovery videoconference on September 22, 2020. Prior to the conference, the Court received and reviewed (1) plaintiff's letter-motion to compel discovery from defendants, dated August 28, 2020¹; (2) defendants' letter-motion regarding plaintiff's "interference" with its third-party subpoena to TOPIT, dated September 4, 2020 (Dkt. No. 123); and (3) the opposition and reply letter-briefs in response to the letter-motions (Dkt. Nos. 127, 129, 135, 136), which narrowed at least some of the issues before the Court

For the reasons stated on the record during the September 22 conference, the letter-motions are resolved as follows:

1. Extension of Discovery Deadlines

- a. Depositions shall be completed no later than **December 4, 2020**.
- b. Expert discovery shall be completed no later than **January 29, 2021**.
- c. All discovery shall be completed no later than **February 26, 2021**.

No further extensions will be granted absent compelling circumstances.

¹ Plaintiff's letter-motion was initially filed under temporary seal at Dkt. No. 117, accompanied by a letter-application for sealing. (Dkt. No. 116.) In accordance with this Court's August 31, 2020 Order granting the sealing application (Dkt. No. 118), plaintiff refiled its letter-motion in unredacted form, under seal (Dkt. No. 120), and in redacted form, on the public docket. (Dkt. No. 121.)

2. Depositions

In addition to this case, the parties are litigating a case arising out of the same underlying events in New York Supreme Court, New York County (the State Court) under Index No. 654761/2018 (the State Court Action). Plaintiff EFCG has made a motion in the State Court Action for a protective order regarding the deposition of Paul Zofnass. In accordance with the parties' agreement, made on the record during the September 22 videoconference, they will abide by the decision of the State Court as to any Zofnass deposition in this action. Additionally, witnesses whose testimony is potentially relevant to both the State Court Action and this action will be required to testify only once, the parties having agreed that their testimony (to the extent otherwise admissible) can be used in both cases.

3. TOPIT Subpoena

No later than **September 29, 2020**, plaintiff EFCG may move for a protective order with respect to documents responsive to the TOPIT subpoena but withheld and logged as privileged (*see* Dkt. No. 136-1) at plaintiff's direction. In addition to its motion papers, plaintiff shall submit the withheld documents to chambers by email (to Moses.NYSDChambers@nysd.uscourts.gov) and in hard copy, by mail or courier, for *in camera* review. Defendants may submit a brief in opposition to the protective order motion no later than **October 6, 2020**.

4. Defendants' Production of ESI Required by ¶ 1 of this Court's Order dated June 19, 2020 (Dkt. No. 85)

No later than **September 29, 2020**, counsel shall arrange and participate in a teleconference or videoconference with each party's relevant IT consultant(s) to discuss any remaining issues as to the production and/or accessibility of the directory and file listings and access logs, including USB logs, LNK files, and shellbags, that defendants were ordered to produce on June 19, 2020.

If the parties are unable to resolve the disputes, they shall file a joint letter, no later than **October 6, 2020**, succinctly stating each party's position as to why the production is adequate (or inadequate), and – if production has not yet been completed – the date on which it will be completed. If defendants cannot produce certain of the requested files because they do not exist, defendants shall make a written representation to that effect in the joint letter.

5. Privilege Logs

No later than **October 6, 2020**, each party shall serve revised privilege logs, in compliance with Local Civil Rule 26.2.

6. Defendants' Supplemental Document Production

No later than **September 29, 2020**, defendants shall produce the agreed-upon supplemental document production for the single remaining ESI term.

7. Defendants' Demand for Inspection (Dkt. No. 129-6)

During the videoconference, plaintiff confirmed that it has narrowed its claim under the Computer Fraud and Abuse Act, *see* First Am. Compl. (Dkt. No. 43) ¶¶ 28-58, 94-108, to defendants' alleged unauthorized accessing of, deletion or destruction of data from, and/or damage to their EFCG-issued laptops and cellphones. Consequently, only Request No. 21 remains relevant. Plaintiff represented, on the record, that it had produced all documents responsive to Request No. 21 in its possession.

8. Defendants' Document Requests (Dkt. No. 129-5)

In response to defendants' Request No. 2, and to the extent not previously produced, plaintiff shall produce all drafts and iterations of its 2016, 2017, and 2018 surveys, as well as all communications among and between EFCG personnel with respect to the development, modification, editing, or finalization of those three surveys, no later than **October 6, 2020**.

In response to Request Nos. 7, 21, and 26, and to the extent not previously produced, plaintiff shall produce all nonprivileged and responsive documents no later than **October 6, 2020**.

9. Defendants' Motion to Seal (Dkt. No. 128)

Defendants' motion (Dkt. No. 128) to seal their September 8, 2020 letter-brief and exhibits (Dkt. No. 129) is DENIED without prejudice to renewal on or before **October 6, 2020**. In any renewed sealing application, defendants should explain why the underlying letter and all six of its exhibits should be sealed in toto rather than redacted to protect any arguably sensitive material. Dkt. No. 129 will remain under seal pending the timely renewal of defendants' sealing motion.

The Clerk of Court is respectfully directed to close the letter-applications at Dkt. Nos. 117, 120, 121, 123, and 128.

Dated: New York, New York
September 29, 2020

SO ORDERED.



BARBARA MOSES
United States Magistrate Judge